IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P. No. 9790 of 2006
Date of Decision: 17 Nov.,2007

Pawan Kumar ..... Petitioner

Versus

State of Haryana and others ..... Respondents

Coram: Hon'ble Mr. Justice Ashutosh Mohunta

Present: Mr. R.K.Malik, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana
for respondent Nos. 1 and 2.

Mr. Varun Katyal, Advocate
for respondent No.4.

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ASHUTOSH MOHUNTA, J.

The petitioner has prayed for quashing the impugned order dated 1.3.2006 (Annexure P-3) vide which his candidature for the post of Lecturer in Mechanical Engineering has been rejected. The petitioner has also prayed that directions be issued to the respondents to consider his claim for appointment from the date other batch-mates have been appointed.

The Haryana Public Service Commission vide advertisement No.11 advertised 9 posts of Lecturers, one each in Electronics & Communication Engineering, Electrical Engineering, Mechanical Engineering, Food Technology, Computer Engineering, English, Physics, Mathematics & Chemistry in the Chaudhary Devi Lal Memorial Engineering College, Panniwala Mota, Sirsa. The last date for submission of applications was 31.3.2003. The petitioner applied for the post of Lecturer in Mechanical Engineering. The essential qualification for the said post was as under:-

"First Division in M.E./M. Tech with Bachelor's degree with 1st

Division in Mechanical Engineering with specialization in any of the specified areas. In case of ME/M. Tech. candidates are not available, Bachelor's degree with 1st division in Mechanical Engineering and with specialization in the specified areas could be considered.

Specialization in CAD/ CAM/ Robotics/ Automation/ CIM/ Automobile Engineering."

As no candidate with 1st Class M.E./M. Tech. was available with the Commission, therefore, the Haryana Public Service Commission decided to call those candidates who had secured 1st division in Mechanical Engineering. The petitioner along with other candidates was also called for interview on 6.5.2003. The petitioner who had passed his `Diploma Engineering' Degree from Penza State University, Penza, which is duly recognized by the Association of Indian Universities was selected and placed at Sr.No.1 in order of merit for the post of Lecturer in Mechanical Engineering. However, vide order dated 1.3.2006 (Annexure P-3) and order dated 9.5.2006 (Annexure R-2) the candidature of the petitioner was rejected on the ground that the petitioner was not able to prove that he had passed the Bachelor of Engineering with 1st Division.

At the motion stage, the Association of Indian Universities was impleaded through its Director as respondent No.4. as respondent No.4 is the expert body who can decide that qualification possessed by the petitioner is recognized or not.

The petitioner had attached the letter Annexure P/1 issued by the Association of Indian Universities. The relevant portion of Annexure P/1 is reproduced below for ready reference:-

"Mr. Pawan Kumar has obtained `Diploma Engineering' Degree from Penza State University, Penza, an accredited University in Russian Federation-this qualification is Equated with Bachelor of Engineering Degree of an Indian University."

The Association of Indian Universities in para 3 of its reply has admitted that Annexure P/1 annexed with writ petition is the copy of

equivalence certificate issued by the Association of Indian Universities. So in view of the reply filed by respondent No.4, now there is no dispute that `Diploma Engineering' Degree passed by the petitioner from Penza State University, Penza, is equivalent to Bachelor of Engineering degree of an Indian University.

The only controversy in the present case is whether the petitioner has passed the said degree with 1st division or not. It is also not disputed that the candidates who had secured 60% marks are considered as first divisioners.

A perusal of the certificate Annexure P/2 shows that there were total 57 papers. Out of the 57 papers, 8 papers were such in which no examination was held and in those 8 papers candidates are marked "CREDIT" which indicate adequate knowledge without grading in such subjects. This factual position is clear from Annexure P/5 issued by Penza State University, Penza. The letter Annexure P/5 further clarified that in that University there was a grading system and the grades equivalent to percentage are as follows:-

Excellent : 95%

Good : 75%

Satisfactory : 60%

As the total number of papers were 57, out of which 8 papers were such where there was no written examination held. These 8 papers were marked as "CREDIT" which indicates adequate knowledge without grading in such subjects. Thus, as the written examination was conducted in 49 papers only, hence, the grading of the petitioner would have to be converted into percentage by taking into account the grading obtained by the petitioner in 49 papers which is as under:-

"In 29 papers grading of the petitioner was Satisfactory. Satisfactory equivalent to 60%.

In 18 papers, the grading of the petitioner was Good. Good is equivalent to 75%.

In 2 papers, the grading of the petitioner was Excellent. Excellent is equivalent to 95%."

So if percentage of the petitioner is calculated on the basis of

all the 49 papers, it comes as under:-

"29x60 = 1740

18x75 = 1350

2x95 = 190

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Total 3280"

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So the percentage of the petitioner was as under:-

"3280/49=66.93%."

The case of respondent Nos.1 to 3 in the written statement is as under:-

"There are 57 papers and he had obtained satisfactory grade in 29 papers , good grade in 18 papers and excellent grade in 2 papers only. He has divided the total marks 3280 by 49 instead of dividing the same by 57. As there were 57 papers, therefore, he should have divided the total marks by 57 for working out the average percentage."

Although it is correct that total papers of the petitioner were 57, but written examination was only in 49 papers. In 8 papers, there was no written examination and those 8 papers are marked "CREDIT" which indicate adequate knowledge without grading in such subjects. This position has already cleared by the University in Annexure P/5. The Annexure P/5 is reproduced below for ready reference:-

"Under the system of education prevalent in various academic institutions in the Russian Federation including the Penza State University Penza State examinations are passed by grades. Grade 5 (Excellent) denotes a pass at a high level, Grade 4 (Good) denotes a pass at a middle level and Grade 3 (Satisfactory) a pass at lower level. Apart from this some papers are marked "CREDIT" which indicates adequate knowledge without grading in such subjects in which no examinations are held.

The grade equivalents in percentage are as follows:-

GRADES EQUIVALENTS IN TERMS OF PERCENTAGE

Excellent (5) 95%

Good (4) *75%*

Satisfactory (3) *60%"*

The written test in which the petitioner appeared was only in 49 papers in which the petitioner secured 3280 marks, the percentage of which comes to 3280/49=66.93% which is more than 60%. Therefore, the petitioner was duly eligible and he was rightly selected by the Haryana Public Service Commission and subsequently his candidature was arbitrarily rejected.

Further the respondents have alleged that petitioner did not turn up when called by the Commission on 28.4.2006, this is also factually incorrect. The petitioner had appeared before the Commission on 28.4.2006 and shown Annexure P/1 which clearly demonstrate that the diploma possessed by the petitioner is equivalent to Degree in Engineering. So this argument that petitioner did not turn up on 28.4.2006 is wrong. Rather the Haryana Public Service Commission in its reply has admitted that petitioner had appeared before the Commission on 28.4.2006. The relevant last three lines of internal page 3 of the reply filed by the Commission are reproduced below for ready reference:-

> "*The petitioner appeared before the Commission on 28.4.2006 and was heard but he failed to submit any proof of having obtained 1st Division in the Diploma/Degree in question."*

So this argument of respondent Nos. 1 to 3 that petitioner did not turn up, is on the face of it wrong and contrary to the written statement filed by the Haryana Public Service Commission.

In view of the above, the order Annexure P-3 is quashed. It is held that the petitioner is entitled to be considered for appointment as Lecturer in Mechanical Engineering, from the date his other batch-mates were appointed. Ordered accordingly.

Writ petition is allowed.

(ASHUTOSH MOHUNTA)

17.11.2007 **JUDGE**